

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTHUR HARRIS,

Plaintiff,

v.

XAVIER BECERRA, et al.,

Defendants.

CASE NO. 2:17-cv-1802-RAJ

ORDER

This matter comes before the Court on Defendants Terrace Park Homeowners Association's ("Association") and The Helsing Group Inc.'s ("Helsing") (collectively, "Defendants") Motion to Dismiss (Dkt. # 19), Plaintiff Arthur Harris' ("Plaintiff") Motion for Default Judgment (Dkt. # 39), and Plaintiff's Motion for Transfer (Dkt. # 41). Plaintiff has made two filings in opposition to Defendants' Motion to Dismiss (Dkt. ## 26, 29), and Defendants have filed a Reply (Dkt. # 37). Defendants have not responded to Plaintiff's Motions.

For the reasons that follow, the Court **GRANTS IN PART** Defendants' Motion to Dismiss, and **DISMISSES** Plaintiff's claims **WITHOUT PREJUDICE** due to lack of personal jurisdiction. The Court also **DENIES** Plaintiff's Motion for Default Judgment and Motion to Transfer.

I. BACKGROUND

Plaintiff purchased a condominium in Vallejo, California, on or about September 29, 2015. Dkt. # 1-10 at 1. On June 8, 2016, Plaintiff allegedly received two tax assessments from Solano County, California. *See* Dkt. # 1-11. Plaintiff subsequently challenged these taxes, and an assessment of homeowners' association ("HOA") fees, in small claims court in Solano County. Dkt. # 1-12. After unsuccessfully litigating his claims in small claims court, Plaintiff filed the current action. *See* Dkt. # 1 at 7.

Plaintiff's Complaint restates the same claims presented to the small claims court: that Defendants impermissibly assessed and attempted to collect property taxes and HOA fees. Dkt. # 1 at 3–6. Specifically, Plaintiff alleges that he not liable for paying property taxes because he, as a mortgagor, is not the true owner of property in question. Dkt. # 1-8 at 1. Plaintiff's theory is that the mortgage company is responsible for paying property taxes until he satisfies the mortgage lien. *Id.* at 2. Additionally, Plaintiff alleges that he is not responsible for paying HOA fees on the theory that California's Davis-Stirling Act—the state statute allowing HOAs to levy assessments on constituent owners—is unconstitutional. *See id.* # 1-8 at 3–6; Cal. Civ. Code § 4000 *et seq.* Plaintiff asserts that HOA fees are actually taxes and that only the government, in accordance with the Sixteenth Amendment, is allowed to levy and collect taxes. *See* Dkt. # 1-1 at 4.

On December 11, 2017 Plaintiff amended his original Complaint to add Helsing and Association as additional Defendants, and apparently remove Xavier Becerra, Charles Lomeli, and Marc Tonnesen as Defendants. Dkt. # 7.¹ Plaintiff's Amended Complaint against Helsing and Association again alleges that Defendants Helsing and Association, two California entities, impermissibly assessed HOA fees against Plaintiff

¹ Plaintiff attempted to supplement this Amended Complaint with additional amendments, but the Court advised Plaintiff that it would not consider these filings because they did not comply with Local Civil Rule 15. Dkt. # 31.

1 for his California condominium. *Id.* Following this Amended Pleading, Defendants
2 Helsing and Association are the only remaining Defendants. *Id.*

3 On June 26, 2018, Defendants filed their Motion to Dismiss pursuant to Rules
4 12(b)(1), 12(b)(2), and 12(b)(6). Dkt. # 19. A day later, Plaintiff filed a motion for
5 default judgment against Defendants, which this Court denied on July 5, 2018. Dkt. ##
6 23, 31. Plaintiff also filed two papers in response to the Motion to Dismiss on July 2 and
7 5, 2018. Dkt. ## 26, 29. On September 20, 2018, Plaintiff filed another Motion for
8 Default Judgment against Defendants. Dkt. # 39. Plaintiff also filed a Motion to
9 Transfer on October 31, 2018. Dkt. # 41.

10 II. DISCUSSION

11 A. Motion to Dismiss

12 Defendants move to dismiss Plaintiff's Complaint on three grounds: (1) lack of
13 subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1); (2) lack of personal
14 jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2); and (3) failure to state a claim pursuant
15 to Fed. R. Civ. P. 12(b)(6). Dkt. # 19.

16 Defendants first claim that this Court lacks subject matter jurisdiction because
17 Plaintiff claims to be a citizen of both Washington and California, and that there is
18 therefore no complete diversity because Defendants are California entities. Dkt. # 19 at
19 2-3. In diversity cases, federal district courts are vested with original jurisdiction over
20 civil actions where the amount in controversy exceeds \$75,000 and the parties are
21 citizens of different states. 28 U.S.C. § 1332(a)(1). A person's state citizenship is
22 determined by their state of domicile, not their state of residence. *Kanter v. Warner-*
23 *Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). A person is domiciled in a location
24 "where he or she has established a fixed habitation or abode in a particular place, and
25 [intends] to remain there permanently or indefinitely." *Lew v. Moss*, 797 F.2d 747, 749-
26 50 (9th Cir. 1986). Here, Plaintiff contends that he has "citizenship" in both Washington
27 and California. Dkt. # 3 at 4; Dkt. # 7 at 4. It is not clear to this Court, however, that

1 Plaintiff is aware of the distinction between owning property in a state and being
2 domiciled in that state, as Plaintiff claims he was living, and still lives, in Washington
3 when he filed this lawsuit. Dkt. # 26 at 2. This would seem to indicate that Plaintiff is
4 domiciled in Washington. Defendants do not address this distinction, and the Court does
5 not find sufficient reason, at this point, to dismiss this action on subject matter
6 jurisdiction grounds.

7 However, the Court does find good reason to grant Defendants' request to dismiss
8 this action for lack of personal jurisdiction. Dkt. # 19 at 3-5. Plaintiff has the burden of
9 establishing personal jurisdiction. *Ziegler v. Indian River County*, 64 F.3d 470, 473 (9th
10 Cir. 1995). "It is well established that where the district court relies solely on affidavits
11 and discovery materials, the plaintiff need only establish a *prima facie* case of
12 jurisdiction." *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 587 n.3 (9th Cir. 1993). "Federal
13 courts apply state law to determine the bounds of their jurisdiction over a party."
14 *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (citing Fed. R. Civ.
15 P. 4(k)(1)(A)). Washington's long-arm statute, RCW 4.28.185, "extends jurisdiction to
16 the limit of federal due process." *Shute v. Carnival Cruise Lines*, 113 Wn. 2d 763, 771,
17 783 P.2d 78 (1989). The due process clause grants the court jurisdiction over defendants
18 who have "certain minimum contacts . . . such that maintenance of the suit does not
19 offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v.*
20 *Washington*, 326 U.S. 310, 316 (1945).

21 Personal jurisdiction can be found on either of two theories: general jurisdiction
22 and specific jurisdiction. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082,
23 1086 (9th Cir. 2000). A defendant with "substantial" or "continuous and systematic"
24 contacts with the forum state is subject to general jurisdiction. *Id.* "The inquiry whether
25 a forum State may assert specific jurisdiction over a nonresident defendant focuses on the
26 relationship among the defendant, the forum, and the litigation." *Axiom Foods, Inc. v.*
27 *Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (internal quotations omitted).

1 Here, Plaintiff has not identified any basis for general jurisdiction over
2 Defendants, and wholly fails to address Defendants' arguments as to personal
3 jurisdiction. At the outset, the Court considers this lack of a response as an admission
4 that on this point, Defendants' Motion to Dismiss has merit. *See* Local Civil Rule
5 7(b)(2). Moreover, the record indicates that general jurisdiction does not exist for either
6 remaining Defendant. The only two remaining Defendants are both California
7 corporations, and both have their principal places of business in California. Dkt. # 7 at 4;
8 *see also* Dkt. ## 20, 21. Defendants also represent that neither entity has an office or
9 employees in Washington, which Plaintiff does not contest. Dkt. # 19 at 3. Defendants
10 argue that both operate exclusively in California, and Plaintiff has failed to allege
11 otherwise. *Id.* In fact, Plaintiff has failed to allege *any* contacts between Defendants and
12 Washington, to say nothing of contacts that are "substantial" or "continuous and
13 systematic."

14 As for specific jurisdiction, the Court applies a three-part test to determine
15 whether the exercise of specific jurisdiction over a non-resident defendant is appropriate:
16 (1) the defendant has either purposefully directed his activities toward the forum or
17 purposely availed himself of the privileges of conducting activities in the forum, (2) the
18 plaintiff's claims arise out of the defendant's forum-related activities, and (3) exercise of
19 jurisdiction is reasonable. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068
20 (9th Cir. 2017). On the first prong, to have purposely availed itself of the privilege of
21 doing business in the forum, a defendant must have performed some type of affirmative
22 conduct which allows or promotes the transaction of business within the forum state.
23 *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990). The Ninth Circuit evaluates
24 purposeful direction using the *Calder* effects test, which examines whether the defendant
25 (a) committed an intentional act, (b) expressly aimed at the forum state, (c) causing harm
26 that the defendant knows is likely to be suffered in the forum state. *Schwarzenegger*, 374
27 F.3d at 803 (citing *Calder v. Jones*, 465 U.S. 783 (1984)).

1 The record is devoid of any indication that Defendants have purposefully availed
2 themselves to this forum. Throughout this litigation, Plaintiff has not alleged any
3 conduct, intentional or otherwise, from Defendants that has reached Washington. Rather,
4 by its nature, this lawsuit is centered around a dispute in California, with California
5 entities, based on California law. Dkt. ## 1, 7. The Court finds that Plaintiff has not
6 satisfied the first prong of the test for specific personal jurisdiction, and thus the Court's
7 jurisdictional analysis will end. *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155
8 (9th Cir. 2006) ("[Plaintiff's] arguments fail under the first prong. Accordingly, we need
9 not address [the remaining two prongs]."). There is simply no basis to exercise personal
10 jurisdiction over Defendants in this lawsuit as there is no identifiable contact or link
11 between Defendants and Washington.

12 Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss for Lack of
13 Personal Jurisdiction, pursuant to Rule 12(b)(2).² The Court will thus **DISMISS**
14 **WITHOUT PREJUDICE** Plaintiff's claims against Defendants.

15 **B. Plaintiff's Outstanding Motions**

16 Plaintiff has two other outstanding motions in this case: a Motion for Default
17 Judgment (Dkt. # 39) and a Motion to Transfer (Dkt. # 41). The Court will deny both
18 motions.

19 First, Plaintiff's Motion for Default, like his previous motion for default, fails
20 because Defendants have "otherwise defended" in this action by way of their Motion to
21 Dismiss. *See* Dkt. # 31; *see also* Fed. R. Civ. P. 55(a). The Court **DENIES** Plaintiff's
22 Motion for Default for the same reasons.

23 Second, Plaintiff's Motion to Transfer, though unopposed, fails because Plaintiff
24 has failed to make the requisite showing for such a transfer, and because the request is
25

26 ² Because the Court dismisses this case due to lack of personal jurisdiction, it will not
27 reach Defendant's Rule 12(b)(6) motion. Dkt. # 19 at 5-9.

1 moot. Dkt. # 41. To support a motion to transfer under Section 1404(a), the moving
2 party must first show the proposed transferee court possesses subject matter jurisdiction
3 over the action, the parties would be subject to personal jurisdiction in the transferee
4 court, and venue would have been proper in the transferee court. *Hoffman v. Blaski*, 363
5 U.S. 335, 344 (1960); *A.J. Indus., Inc. v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 503
6 F.2d 384, 386 (9th Cir. 1974). Plaintiff's Motion to Transfer makes no such showing;
7 instead, it merely asserts that Plaintiff has filed a similar federal case in Sacramento, and
8 includes a vague worry that this Court will not be fair to him. Dkt. # 41 at 2. These
9 assertions, without more, fail to satisfy the statutory criteria, and the Court cannot make
10 such findings of its own accord based on the current record. Moreover, because the
11 Court is dismissing Plaintiff's claims without prejudice for lack of personal jurisdiction,
12 Plaintiff's request for transfer is now moot. Accordingly, the Court **DENIES** Plaintiff's
13 Motion to Transfer.

14 **III. CONCLUSION**

15 For the foregoing reasons the Court **GRANTS IN PART** Defendants' Motion to
16 Dismiss (Dkt. # 19). Plaintiff's claims against Defendants are hereby **DISMISSED**
17 **WITHOUT PREJUDICE** due to lack of personal jurisdiction over Defendants.
18 Additionally, the Court **DENIES** Plaintiff's Motion for Default (Dkt. # 39) and **DENIES**
19 Plaintiff's Motion to Transfer (Dkt. # 41).

20
21 Dated this 31st day of January, 2019.

22
23
24 

25 The Honorable Richard A. Jones
26 United States District Judge
27